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which they have special arrangements, thus forcing shippers by other water lines to pay a series of charges for switching, docking, and unloading, and putting them to much inconvenience. In effect it means that the shipper who wishes the proper service must use the water line preferred by the railroad.

(26) Railroads may refuse to issue through bills of lading except to favored lines, thus preventing independent lines from obtaining transfer traffic. To deprive an independent line of the advantages accruing from a joint rate arrangement with railroads places the line in a defenseless position as compared with competing lines not thus handicapped. Without such an arrangement the independent line can not secure interior freight and is limited largely to port-to-port traffic, which is too small in volume to support the line. On the other hand, the water line having the prorating arrangement can cut rates to an unremunerative basis on the port-to-port traffic, thereby eliminating its less fortunate competitor, and recoup its losses in large measure out of the profits secured on the through business.

(27) Railroads charge more for the local haul from Buffalo to seaboard points, for example, on grain that is taken to Buffalo by boat than the proportionate share of the all-rail haul from Chicago to the seaboard, thus making the through rail-water route unprofitable as compared with the all-rail route. The local rate for the eastern rail haul is so high as to leave little to the independent water carrier for its local lake haul.

(28) Railroads can greatly reduce rates between those points only where they are competing with an independent water carrier. Since most of the traffic of a large railroad system is free from water competition, it can afford to lower the rates on the competitive traffic to an unremunerative basis without appreciably affecting the earnings of its entire system.

APPENDIX III

RECOMMENDATIONS OF THE COMMITTEE ON THE MERCHANT MARINE AND FISHERIES

(Reprinted from pp. 415-424 of Volume IV of the "Proceedings of the Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations, under House Resolution 587.")

RECOMMENDATIONS RELATING TO CARRIERS BY WATER ENGAGED IN THE FOREIGN TRADE

The facts contained in the foregoing report show that it is the almost universal practice for steamship lines engaging in the American foreign trade to operate, both on the in-bound and out-bound voyages, under the terms of written agreements, conference arrangements or gentlemen's understandings, which have for their principal purpose the regulation of competition through either (1) the fixing or regulation of rates, (2) the apportionment of traffic

by allotting the ports of sailing, restricting the number of sailings, or limiting the volume of freight which certain lines may carry, (3) the pooling of earnings from all or a portion of the traffic, or (4) meeting the competition of non-conference lines. Eighty such agreements or understandings, involving practically all the regular steamship lines operating on nearly every American foreign trade route, are described in the foregoing report. (For a full classification of these agreements see pp. 281 to 295 of the report.) The report also presents the economic advantages and disadvantages of steamship agreements and conference arrangements as presented to the Committee by steamship line representatives and the exporting and importing interests of the United States. (For a full classification of the advantages and disadvantages see pp. 295 to 307 of the foregoing report.)

In formulating its recommendations it became apparent to the Committee, in view of all the facts presented, that only two courses of action were open for adoption. Either the agreements and understandings, now so universally used, may be prohibited with a view to attempting the restoration of unrestricted competition, or the same may be recognized along lines which would eliminate existing disadvantages and abuses. It is claimed that the adoption of the first course—the prohibition of coöperative arrangements between practically all the lines in nearly all the divisions of our foreign trade—would not only involve a wholesale disturbance of existing conditions in the shipping business but would deprive American exporters and importers of the advantages claimed as resulting from agreements and conferences if honestly and fairly conducted, such as greater regularity and frequency of service, stability and uniformity of rates, economy in the cost of service, better distribution of sailings, maintenance of American and European rates to foreign markets on a parity, and equal treatment of shippers through the elimination of secret arrangements and underhanded methods of discrimination. (A classification of the advantages claimed as resulting from the aforementioned factors is presented on pp. 295 to 303 of the foregoing report.)

These advantages, the Committee believes, can be secured only by permitting the several lines in any given trade to coöperate through some form of rate and pooling arrangement under government supervision and control. It is the view of the Committee that open competition can not be assured for any length of time by ordering existing agreements terminated. The entire history of steamship agreements shows that in ocean commerce there is no happy medium between war and peace when several lines engage in the same trade. Most of the numerous agreements and conference arrangements discussed in the foregoing report were the outcome of rate wars, and represent a truce between the contending lines. To terminate existing agreements would necessarily bring about one of two results; the lines would either engage in rate wars which would mean the elimination of the weak and the survival of the strong, or, to avoid a costly struggle, they would consolidate through common ownership. Neither result can be prevented by legislation, and either would mean a monopoly fully as effective, and it is believed more so, than can exist by virtue of an agreement. Moreover, steamship agreements and conferences are not confined to the lines engaging in the foreign trade of

the United States. They are as universally used in the foreign trade of other countries as in our own. The merchants of these countries now enjoy the foregoing advantages of coöperative arrangements, and to restore open and cut-throat competition among the lines serving the United States would place American exporters at a disadvantage in many markets as compared with their foreign competitors.

Steamship line representatives, as well as the patrons of the lines, were almost a unit in emphasizing to the Committee the importance and necessity of the aforementioned advantages of agreements and conferences, and in asserting that these advantages can only be effected by permitting the several lines in a given trade to coöperate in the regulation of their rates and the expeditious handling of their business. Very few of the many exporters and importers, who communicated with the Committee, were opposed to agreements and conferences in themselves, provided they are fairly and honestly conducted. Many, however, objected to the secrecy with which agreements and conferences are now conducted; and stated that, while the advantages must be admitted, they have no assurance and no means of knowing whether the conditions claimed for agreements and conferences are always fulfilled. A considerable number of complaints were also filed with the Committee objecting to excessive rates, discrimination between shippers in rates and cargo space, indifference to the landing of freight in proper condition, arbitrariness in the settlement of just claims, failure to give due notice to shippers when rates were to be increased, refusal to properly adjust rates as between various classes of commodities, and the unfairness of certain methods—such as fighting ships, deferred rebates, and threats to refuse shipping accommodations—used by some conference lines to meet the competition of nonconference lines. Unfortunately the truth of many of these complaints could not be ascertained because of the confidential nature of the information furnished. As pointed out in the report (p. 306), it seemed to be the general impression among shippers who filed complaints with the Committee that the conference lines—

so completely dominate the shippers with whom they deal that these shippers can not afford, for fear of retaliation, to place themselves in a position of active antagonism to the lines by openly giving particulars of their grievances.

While admitting their many advantages, the Committee is not disposed to recognize steamship agreements and conferences, unless the same are brought under some form of effective government supervision. To permit such agreements without government supervision would mean giving the parties thereto unrestricted right of action. Abuses exist, and the numerous complaints received by the Committee show that they must be recognized. In nearly all the trade routes to and from the United States the conference lines have virtually a monopoly of the line service.

All monopolies—

As pointed out in the foregoing report (p. 304)—

are liable to abuse, and in our foreign carrying trade the monopoly obtained by the conference lines has not been subjected to

any legal control. While carriers by land are supervised and must conform to statutory requirements in the matter of rates and treatment of shippers, steamship companies, through private arrangements, have secured for themselves monopolistic powers as effective in many instances as though they were statutory. Even granting the advantages claimed for steamship conferences and agreements, all may be withdrawn in the absence of supervisory control without the shippers having any redress or protection. The lines are under no legal obligation to continue these advantages. They exercise their powers as private combinations and are apt to abuse the same unless brought under effective government control.

The Committee believes that the disadvantages and abuses connected with steamship agreements and conferences as now conducted are inherent, and can only be eliminated by effective government control; and it is such control that the Committee recommends as the means of preserving to American exporters and importers the advantages enumerated, and of preventing the abuses complained of.

The concensus of opinion (see pp. 307 to 308 of the Report)—

As expressed in the testimony of witnesses and in the numerous communications received by the Committee from shippers—

is overwhelmingly in favor of some form of government regulation of steamship carriers engaged in this country's foreign trade. Nearly all the steamship line representatives, who appeared before the Committee, expressed themselves as not opposed to government supervision which is reasonable and which is limited to the requirements of full publicity and approval of all agreements or arrangements which steamship lines may have entered into with other steamship lines, with shippers, or with other carriers and transportation agencies. On the other hand, the shippers who appeared as witnesses, or otherwise submitted recommendations for proposed legislation, were in the great majority of instances favorable to a comprehensive system of government supervision, sufficiently broad to embrace the regulation of rates without actually fixing them, the approval of contracts, agreements and arrangements, and the general supervision of all conditions of water transportation which vitally affect the interests of shippers. While few of the shippers who communicated with the Committee by letter (and the same may be said of witnesses) attempted to specify the details of their recommendations, they are almost a unit in stating that they are convinced of the desirability of having the Interstate Commerce Commission, or a similar commission, exercise a general supervisory power over foreign water carriers and enforce among the conference lines at all times the various contentions which they have claimed for themselves during the hearings before the Committee. It is noteworthy that only five of the many communications received

by the Committee, which were unfavorable to steamship agreements and conferences as now conducted, display an attitude of hostility toward government regulation. In fact, many of the communications received from shippers make it clear that the writers regard the contentions of the conference line representatives as advantageous to shipper and shipowner if they are honestly and fairly carried out, but state that their experience has been to the effect that, once the combination of lines is established, it is apt to be used in an arbitrary and unfair way by favoring some large corporation or friend to the detriment of other shippers. Such discriminations and arbitrary treatment, it is believed, can only be eliminated by the establishment of some legally constituted authority which is empowered to hear complaints and to order the discontinuance of abuses.

Relative to such supervisory control by the government of steamship carriers in the foreign trade of the United States, the Committee offers the following recommendations:

(1) That navigation companies, firms or lines engaged in the foreign trade of the United States be brought under the supervision of the Interstate Commerce Commission as regards the regulation of rates, the approval of contracts entered into with other water carriers, with shippers, or with American railroads and other transportation agencies, and such other conditions of water transportation as affect the interests of shippers. The Committee has had under consideration the recommendation of a separate Commission for this purpose, but believes that, in view of the close relations existing between rail and water transportation, it would be best to entrust the supervisory control to the Interstate Commerce Commission. If found necessary, in view of the added duties involved in the extension of the Interstate Commerce Commission's jurisdiction to water transportation in accordance with the recommendations to follow, the Committee further recommends that the membership of the Commission be enlarged.

(2) That all carriers engaged in the foreign trade of the United States, parties to any agreements, understandings, or conference arrangements hereinafter referred to, be required to file for approval with the Interstate Commerce Commission a copy of all written agreements (or a complete memorandum if the understanding or agreement is oral) entered into (1) with any other steamship companies, firms, or lines engaged directly or indirectly in the American trade, or (2) with American shippers, railroads or other transportation agencies. All modifications and cancellations of such agreements or understandings as may be made from time to time should also be promptly filed. The Commission should be empowered to order canceled any such agreements, or any parts thereof, that it may find to be discriminating or unfair in character, or detrimental to the commercial interests of the United States.

(3) That the Interstate Commerce Commission be empowered to investigate fully complaints charging the unreasonableness or unfairness of rates, or to institute proceedings on its own initiative, and to order such rates changed

if convinced that the rate under consideration is unreasonably high, or discriminating in character as between shippers, or ports, or between exporters of the United States and their foreign competitors; and to order restitution to shippers of all sums collected in excess of reasonable rates. This recommendation is also intended to extend to the supervision of freight classifications used by the lines, and the investigation of complaints charging refusal on the part of any carrier to properly adjust the rates between classes of commodities.

The Committee realizes that the steamship business differs essentially from that of the railroads (for those differences see pp. 309 to 311 of the Report), and that it might prove injurious to both ship owners and American exporters to require the lines to file their rates and not be permitted to lower the same until after a stipulated period of notice to change rates had been given. On the other hand, the Committee feels that in the absence of government control steamship combinations may in many instances have it within their power to arbitrarily raise rates to an unreasonable degree both as regards the general level and in the case of particular commodities; or, if they so desire, to fail in maintaining rates from the United States to foreign markets on a parity with those from other countries. It is not the purpose of this recommendation to prevent steamship lines from promptly lowering their rates to meet competitive conditions and thus to favor American exporters, who, in competing with foreign markets, often find it necessary in order to close their contracts to have quoted an immediate and favorable rate; but the purpose of the law should be to protect the shipper against any unreasonably high rate which the combination lines may have within their power, by virtue of their agreements and conference arrangements, arbitrarily to impose in the absence of government supervision and control.

(4) That rebating of freight rates to shippers be made illegal; and that, with due regard to the proper loading of the vessel and the tonnage available, discrimination between shippers, or ports, in the matter of rates and space accommodations be prohibited. In this connection it is the belief of the committee that water carriers should be required to charge equal rates to all shippers, irrespective of the volume of freight offered for shipment.

(5) That the Interstate Commerce Commission be empowered to investigate fully all complaints (or to undertake such investigation on its own initiative) charging (1) failure on the part of any carrier to give reasonable notice of increase in rates, (2) unfair treatment of shippers in the matter of cargo space and other facilities, (3) the existence of discriminating or unfair contracts with certain shippers, and (4) unfairness in the settlement of claims and indifference to the landing of freight in proper condition. In this connection the Commission should be empowered to order the discontinuance of all unfair or discriminating practices which it may find to exist, and to adopt whatever measures it may deem necessary to protect the complainant against retaliation.

(6) That the use of "fighting ships" and deferred rebates be prohibited in both the export and import trade of the United States. Moreover, all carriers should be prohibited from retaliating against any shipper by refus-

ing space accommodations when such are available, or by resorting to other unfair methods of discrimination, because such shipper has patronized an independent line, or has filed a complaint charging unfair treatment, or for any other reason.

(7) That adequate penalties be provided to correct and prevent the abuses hereinabove set forth.

RECOMMENDATIONS RELATING TO CARRIERS BY WATER ENGAGED IN THE
DOMESTIC TRADE

Unlike the practice of water carriers in the foreign trade of the United States, agreements to divide the territory or charge certain rates in the domestic trade are few. Competition in rates between domestic water lines, however, has been quite as effectively eliminated as in the foreign trade and this has been accomplished by the several lines through one or more of the numerous methods discussed in Part II of the foregoing Report and summarized on pp. 409 to 412. (Also see pp. 403 to 412 giving a "summary of the extent and methods of control of competition between water carriers in the domestic trade.")

The Act of August 24, 1912, providing for the opening, maintenance, protection and operation of the Panama Canal, contains provisions extending the jurisdiction of the Interstate Commerce Commission over interstate transportation which involves the carriage of property by rail and water, in the following particulars; viz., (1) to establish physical connection, where this is reasonably practicable and justifiable, between the rail carrier and the dock of the water carrier by directing either or both of the carriers to construct the connecting tracks; (2) "establish through routes and maximum joint rates over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced;" and (3) "to establish maximum proportional rates by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates will apply." Section 11 of the Act also provides for the divorcing of common carriers by water from the railroads under certain conditions. These legislative requirements go far toward eliminating some of the undesirable practices which were found by the Committee to exist in the domestic commerce of the United States. The Committee, however, believes, in view of the facts presented in Part II of the Report, that additional legislation is required, and wishes to offer the following recommendations:

(1) That the jurisdiction of the Interstate Commerce Commission be extended to the interstate port-to-port traffic of domestic water carriers, with full power to require all such carriers to file their port-to-port rates and to submit reports of their financial and business operations. As regards interstate port-to-port traffic the Commission should be given full power to regulate rates and to determine maximum charges.

(2) That water carriers be required to file for approval with the Interstate

Commerce Commission all agreements or arrangements affecting interstate transportation, whether written or oral, and all modifications or cancellations thereof, with other water carriers, with railroads or other transportation agencies, or with shippers.

(3) That the carriers be prohibited from granting rebates of any kind to shippers and from discriminating between shippers in rates, in the giving of space accommodations and other facilities, and in the making of unfair contracts based on the volume of freight offered. Water carriers should also be prohibited from using fighting ships, or deferred rebates, or from threatening or resorting to retaliatory or other unfair measures against shippers or competitors. The Interstate Commerce Commission should be empowered to adopt whatever measures it may consider necessary to protect shippers or competitors against such retaliatory methods. Water carriers, if cutting rates with a view to driving out a competitor, should be denied the privilege of restoring rates; and jurisdiction should be conferred on the Interstate Commerce Commission to determine whether rates were cut with the object of crushing such competitor.

(4) That the Interstate Commerce Commission be empowered to investigate fully all complaints charging unfairness in the settlement of claims, and indifference to the loading and landing of freight in proper condition; and to adopt all necessary rules and regulations for the adjustment and settlement of claims.

(5) That as regards all matters relating to interstate transportation, all traffic associations or conferences, whether pertaining to through rail-and-water transportation or to port-to-port traffic only be brought under the supervision of the Interstate Commerce Commission. The Committee recommends that the conditions under which an outside water carrier is admitted to such associations or conferences should be approved by the Commission, and that an outside line should not be denied membership for unfair reasons or simply because the unanimous consent of existing members of the association or conference to the admission of said line cannot be obtained.

(6) That the railroads be prohibited from making the through rail-and-water route unprofitable as compared with the all-rail route by charging more for the same service on water-borne commodities than they charge for the proportionate share of the all-rail haul.

(7) That the Interstate Commerce Commission be empowered to compel railroads to allow competitive water carriers to apply effective differentials. The Commission should also have full supervisory power over divisions between railroads and water carriers as regards through rail-and-water rates. The Committee recommends that rate divisions on any trade route should be opened equally to all water carriers that comply with such conditions of quality and regularity of service as the Commission may determine to be reasonable.

(8) That the railroads and water carriers be required to issue through bills of lading to all interstate water carriers that meet such conditions of quality and regularity of service as the Interstate Commerce Commission may consider reasonable.

(9) That railroads be required to account separately to the Interstate Commerce Commission for the income and expenditures of interstate water lines owned or controlled by them.

(10) That railroads be required to make their terminal facilities available to water carriers on equal terms and under such reasonable conditions as the Interstate Commerce Commission may prescribe. The Committee also believes that the Federal Government should pursue a policy of not expending money in the interests of any port for harbor or channel improvements, unless that port has efficient dock facilities available to all water carriers.

(11) That there should be legislation providing for equal treatment to all shippers and water carriers by transfer and lighterage concerns when forming a link in interstate or foreign commerce.

(12) That all interstate traffic on canals be placed under the supervision of the Interstate Commerce Commission; and that the railroads be prohibited in the future from acquiring, either directly or indirectly, ownership and control of or interest in canals, or water lines, forwarding companies and other navigation facilities on such canals, when the same are used in interstate transportation.

Respectfully submitted,

J. W. ALEXANDER,
Chairman.

APPENDIX IV

BILL TO REGULATE CARRIERS BY WATER ENGAGED IN THE FOREIGN AND INTERSTATE COMMERCE OF THE UNITED STATES

Introduced in the House of Representatives by

J. W. ALEXANDER,
Chairman, Committee on the Merchant Marine and Fisheries.

A BILL TO REGULATE CARRIERS BY WATER ENGAGED IN THE FOREIGN AND INTER-
STATE COMMERCE OF THE UNITED STATES¹

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the term "common carrier by water" when used in this Act means a common carrier engaged in the transportation by water of passengers or property in the interstate or foreign commerce of the United States, and if such transportation is in whole or in part within the territorial limits of the United States or its possessions includes common carriers by water engaged in transportation on canals or partly by water and partly by railroad when both are used under common control, management, or arrangement for a continuous carriage or shipment.